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5 Attorneys for Plaintiff,
Entertainment Stock X, LLC,
6 a Delaware limited liability company

7 **SUPERIOR COURT OF CALIFORNIA,**
8 **COUNTY OF LOS ANGELES**
9 **CIVIL UNLIMITED**

10 ENTERTAINMENT STOCK X. LLC, a Delaware) Case No.
11 limited liability company,)

12 Plaintiff,)

13 v.)

14 ELON SPAR, an individual; JASON
BURINESCU, an individual; and DOES 1 – 25,)

15 Defendants.)

) Assigned For All Purposes To The Hon.

) **COMPLAINT FOR COMPENSATORY**
) **AND PUNITIVE DAMAGES AND**
) **INJUNCTIVE RELIEF FOR:**

) **(1) BREACH OF CONTACT;**

) **(2) CIVIL CONSPIRACY;**

) **(3) BREACH OF FIDUCIARY**
) **DUTY;**

) **(4) CONVERSION;**

) **(5) MISAPPROPRIATION OF**
) **TRADE SECRETS;**

) **(6) UNFAIR COMPETITION IN**
) **VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200**

) **(7) VIOLATION OF THE**
) **RACKETEER INFLUENCED**
) **AND CORRUPT**
) **ORGANIZATIONS ACT**

1 COMES NOW Entertainment Stock X, LLC, a Delaware limited liability company
2 ("Plaintiff" or "ESX"), and as and for its Complaint against the above-named Defendants,
3 complains, alleges, and avers as follows:

4 **GENERAL ALLEGATIONS**

5 1. Plaintiff is a Delaware limited liability company, which at all times relevant hereto
6 conducted business in Los Angeles County, California.

7 2. Defendant Elon Spar ("Spar") is an individual residing in Los Angeles County,
8 California and who perpetrated the wrongful acts alleged *infra* in Los Angeles County, California.

9 3. Defendant Jason Burinescu ("Burinescu") is an individual residing in Los Angeles
10 County, California and who perpetrated the wrongful acts alleged *infra* in Los Angeles County,
11 California.

12 4. The true names and capacities of Defendants DOES 1 through 25 are unknown to
13 Plaintiff, who therefore sues said persons and entities by said fictitious names. Each of the parties
14 designated as a DOE is responsible in some manner for the events and happenings described in the
15 Complaint which proximately caused the damages as alleged herein. Plaintiff will ask leave of
16 Court to amend this Complaint to insert the true names and capacities of the DOES and state
17 appropriate charging allegations, when that information has been ascertained.

18 5. The Court has jurisdiction of this dispute and venue is proper in this Court. The
19 amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this
20 Court. This Complaint is based on the wrongful acts and omissions of the Defendants, perpetrated
21 in Los Angeles County.

22 6. In or about February, 2018 Proxima Media, LLC ("Proxima") and Ryan
23 Kavanaugh ("Kavanaugh") approached the financial services firm Cantor Fitzgerald ("Cantor") to
24 discuss the acquisition of the Hollywood Stock Exchange ("HSX"), which was a web-based multi-
25 player game in which "investors" used simulated money to buy and sell shares of actors, directors
26 and upcoming films. Proxima's goal was to create a system that would allow the public to invest
27 real money in real movies using Regulation A of the Securities Act (the "Actual Movie
28 Exchange").

7. ESX eventually was formed to be the entity which would build, develop, and

1 operate the Actual Movie Exchange.

2 8. Kavanaugh was directed by Cantor to speak to Spar, who was overseeing the
3 selling and/or transaction of HSX for Cantor.

4 9. The first meeting which took place was between Kavanaugh, Andrew Kramer (who
5 was a consultant to Proxima) and Spar. As Proxima had been previously developing a business
6 plan for the Actual Movie Exchange and had a proprietary business plan to so, Proxima required
7 Spar to sign a handwritten Non-Disclosure Agreement, with Kramer there to witness it, which
8 document was superseded by a typed Confidential Non-Disclosure Agreement (“NDA”), a true
9 and correct copy of which is attached hereto as Exhibit 1. Kavanaugh gave Spar a copy of
10 Proxima’s business plan for the Actual Movie Exchange and told him about the business.

11 10. Spar took it back to Cantor after telling Kavanaugh how amazing the plan was.
12 Spar arranged for a meeting between Howard Ludnick (the Chairman and CEO of Cantor),
13 Kavanaugh and Spar. Ludnick was Spar’s friend since childhood.

14 11. The meeting went very well. Kavanaugh presented him with the materials, walked
15 through the plan Proxima had already spent time on. Proxima had already sent to Cantor a
16 proposed agreement with terms prior to the meeting. In the proposed agreement, Cantor and
17 Proxima were going to co-own the business 50/50. Cantor would contribute HSX and would run
18 the entire exchange and Proxima would build the front end and business. Howard and Kavanaugh
19 agreed to the terms in the meeting that day and shook hands, Spar was not yet part of it.

20 12. Spar even prior to such meeting with Ludnick was provided the business plan and
21 work product pertaining to the Actual Movie Exchange, and Spar expressed if the deal goes
22 through he would like to be part of it and suggested being the CEO of the entity that would be
23 formed to effectuate the business goals as he was riveted by the plan created by Proxima and its
24 overall concept. As Proxima believed it would help get the deal done given his relationship with
25 Ludnick and Cantor and agreed to Spar’s request. During this process, Spar signed the NDA.
26 Proxima was also so concerned about non-disclosure that it also wanted and insisted Cantor sign a
27 NDA applicable to Cantor, which took lots of back and forth between lawyers for Proxima and
28 Cantor and Proxima wouldn’t provide Cantor with certain information it had provided to Spar

1 because of Cantor's eventual failure to sign its NDA.

2 13. Over the next weeks following the above-described meeting, the parties were
3 negotiating fine points in the agreement. Spar suggested the board of the company to be formed
4 would be Ryan, Ludnick, and Spar. Ludnick wanted to change one part applicable to Spar.
5 Ludnick requested and Spar objected to Ludnick's requirement that either Ludnick or Kavanaugh
6 could remove Spar as CEO.

7 14. Spar at this point was very upset and flew in to Los Angeles multiple people who
8 worked at Cantor, including Rich Jacobs ("Jacobs") who still today, and since inception, runs the
9 Cantor Exchange, along with multiple other current and former Cantor employees.

10 15. Together, led by Spar, they convinced Proxima that they should not be in business
11 with Ludnick/Cantor, that Ludnick was an awful partner who would certainly be always looking to
12 "screw" them. Spar explained that the reason Ludnick wanted to be able to remove him is so he
13 could always block anything he didn't want to do even if it was good for the company. He and
14 Jacobs together explained that Ludnick was so awful and difficult in business that even Jacobs
15 after 10 years and being the key person had elected to not be under contract where he would make
16 millions of dollars and instead took 400k as a salary with no upside so he could leave and not be
17 owned by Ludnick. They explained that Spar had spoken to all of them and that they would all
18 leave Cantor and join ESX and build the Actual Movie Exchange for Proxima, something they had
19 never prior discussed or considered either within Cantor or outside.

20 16. ESX was formed and hired Spar as CEO, negotiated his deal and all agreed upon
21 his deal. This included Michael Lambert as one of the other partners and the deal was papered and
22 documented by Proxima, although some of the non-material terms continued to be finalized.

23 17. Spar asked ESX to hire Burinescu, which it did at \$25,000 a month, and also
24 provided offices, parking and all of Proxima's resources, including team members Geoff
25 Doempke, Tina Mirfarsi, John Flock and others.

26 18. ESX, using funding from Proxima, invested over two million dollars in the
27 development of the business and business model.

28 19. ESX operated for almost a year out of Proxima's office, with Spar always

1 presented as CEO both internally and externally. For instance, and by way of example, Spar was
2 listed as CEO in Investor Presentations in connection with fundraising efforts. During that year,
3 ESX and Spar introduced Spar to hundreds of persons as ESX's CEO, including making such
4 representation of vendors, members, partners, clients, and developers. He meet with dozens of
5 investors during a fundraising roadshow and represented himself as ESX's CEO. He had business
6 cards which listed him as ESX's CEO.

7 20. Burinescu also was represented both internally and externally as a senior executive
8 of ESX.

9 21. ESX and Spar had a number of meetings where Jacobs and other Cantor personnel
10 came to Los Angeles to discuss their leaving and their packages.

11 22. ESX and Spar had agreed that Spar would be a 12 percent owner of ESX.

12 23. Spar attempted to renegotiated his deal from 12 percent to up to 33 percent, which
13 ESX eventually agreed to as long as Spar paid the other members who came from Cantor
14 Exchange, like Jacobs, from that amount and also based upon achieving certain milestones. Spar
15 did not want Jacobs to know how much stock Spar was getting as he intended on giving Jacobs
16 under 5 percent and had already given Burinescu 5 percent.

17 24. Spar and Lambert went on a roadshow to raise capital for ESX. They were
18 successful and had commitments for approximately 10 million. Kavanaugh for ESX has obtained
19 commitments for approximately 5 million.

20 25. It came to Kavanuagh's attention however that the business needed less then 5
21 million dollars.

22 26. When Kavanaugh confronted Spar, Spar explained since Jacobs and his other
23 friends were leaving their jobs at Cantor, Spar wanted them to have a guarantee of 3 years of job
24 security. Kavanaugh was not ok with this and he and Spar had a very heated conversation as
25 Kavanaugh explained that if after one year it wasn't working (which required less than 5 million
26 dollars) it wasn't going to work and he would be knowingly losing another 10 million of
27 investors' money. Spar did not want to hear this. Spar then became hard to get hold of and he
28 stopped coming into the office but would reply he was traveling.

1 27. Over a 3 week period Kavanaugh was trying to get a copy of ESX's work product
2 (similar to a scope of work) which was basically the entire summary of how to execute on the plan
3 the Proxima and ESX team and members had shared and the work product on what ESX had
4 spent its money on. Kavanaugh had been provided copies of all of those material, which
5 mysteriously disappeared from his office after his conversation with Spar.

6 28. On information and belief, Spar or Jason took the materials from Kavanaugh's
7 office.

8 29. Spar and Jason refused to provide the materials that he took from Kavanaugh's
9 office.

10 30. Spar sent to Kavanaugh an aggressive email stating he no longer wanted to work
11 with Kavanaugh or ESX. Kavanaugh suggested that he and Spar meet. That did meet, and during
12 that meeting he couldn't give any examples or reasons why he had taken this stance, and when
13 Kavanaugh questioned Spar, Spar stated he had not decided yet if he was going to give ESX its
14 work product back, took the position that he hadn't signed a valid NDA, and refused to return any
15 of the materials he had purloined.

16 31. At the same time Spar left ESX, he was joined by his protégé Burinescu, who also
17 took with him ESX's work product. Kavanaugh instructed Burinescu to return ESX's work
18 product, but he never responded or returned such work product.

19 32. Spar and Burinescu are currently using the information they obtained as CEO of
20 ESX and as senior executive of ESX to poach ESX's employees, investors, and other parties who
21 they met in their capacity of officers and fiduciaries of ESX.

22 **FIRST CAUSE OF ACTION**

23 **(BREACH OF CONTRACT;**

24 **AGAINST ALL DEFENDANTS)**

25 33. Plaintiff realleges and incorporates by reference the prior and subsequent
26 paragraphs of this Complaint.

27 34. The NDA is between Spar and Promixa, pertaining to business matters relating to
28 Proxima and its affiliated entities.

1 35. ESX is an affiliated entity of Proxima, and a third-party beneficiary of the NDA,
2 which was intended to be for the benefit of Proxima and any of its affiliates which provided to
3 Spar any Confidential Information as defined therein.

4 36. Plaintiff has performed all obligations required to be performed pursuant to the
5 NDA

6 37. Spar and Burinescu (who, as alleged *infra*, has engaged in a civil conspiracy with
7 Spar) have improperly disclosed Confidential Information and have failed and refused to return
8 Confidential Information.

9 38. The improper disclosure of Confidential Information and the improper refusal to
10 return Confidential Information constitute breaches of the NDA.

11 39. Defendants' breach of the NDA has damaged ESX in excess of \$25 Million or such
12 other and further amount as may be proven at trial.

13 **SECOND CAUSE OF ACTION**

14 **(CIVIL CONSPIRACY;**

15 **AGAINST THE DEFENDANTS)**

16 40. Plaintiff realleges and incorporates by reference the prior and subsequent
17 paragraphs of this Complaint.

18 41. As alleged in the General Allegations and in the following Causes Of Action,
19 Defendants have committed breaches of fiduciary duty, conversion, and other tortious conduct
20 against Plaintiff.

21 42. Defendants entered into a conspiracy to use Confidential Information and ESX's
22 work product to engage in such wrongful conduct to the detriment of ESX and for their own
23 benefit.

24 43. The actions of the conspirators have damaged ESX in excess of \$25 Million or
25 such other amount as may be proven at trial.

26 44. The actions of the conspirators were malicious, fraudulent, oppressive, and
27 intentional, thereby entitling Plaintiffs to exemplary and punitive damages within the limits of the
28 U.S. Constitution.

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THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY;
AGAINST ALL DEFENDANTS)

45. Plaintiff realleges and incorporates by reference the prior and subsequent paragraphs of this Complaint.

46. Defendants owed a fiduciary duty to ESX while they were officers of ESX.

47. Defendants have breached their fiduciary by taking the actions set forth in the General Allegations.

48. The actions of the Defendants have damaged ESX in the amount of \$25 Million, or such other amount as may be proven at trial.

49. The actions of the conspirators were malicious, fraudulent, oppressive, and intentional, thereby entitling Plaintiffs to exemplary and punitive damages within the limits of the U.S. Constitution.

FOURTH CAUSE OF ACTION
(CONVERSION;
AGAINST ALL DEFENDANTS)

50. Plaintiff realleges and incorporates by reference the prior and subsequent paragraphs of this Complaint.

51. Defendants have stolen ESX's Confidential Information, work product, and trade secrets, by taking the actions set forth in the General Allegations.

52. The actions of the Defendants have damaged ESX in the amount of \$25 Million, or such other amount as may be proven at trial.

53. The actions of the conspirators were malicious, fraudulent, oppressive, and intentional, thereby entitling Plaintiffs to exemplary and punitive damages within the limits of the U.S. Constitution.

54. The actions of the conspirators were malicious, fraudulent, oppressive, and intentional, thereby entitling Plaintiffs to exemplary and punitive damages within the limits of the U.S. Constitution.

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FIFTH CAUSE OF ACTION
(MISAPPROPRIATION OF TRADE SECRETS;
AGAINST ALL DEFENDANTS)

55. Plaintiff realleges and incorporates by reference the prior and subsequent paragraphs of this Complaint.

56. As hereinabove alleged, Defendants misappropriate Plaintiff's trade secrets, including Confidential Information, work product, and contacts with persons previously unknown to Defendants.

57. The actions of the Defendants have damaged ESX in the amount of \$25 Million, or such other amount as may be proven at trial.

58. The actions of the conspirators were malicious, fraudulent, oppressive, and intentional, thereby entitling Plaintiffs to exemplary and punitive damages within the limits of the U.S. Constitution.

SIXTH CAUSE OF ACTION
(UNFAIR COMPETITION;
AGAINST ALL DEFENDANTS)

59. Plaintiff realleges and incorporates by reference the prior and subsequent paragraphs of this Complaint.

60. Based on the above, Defendants have violated *Cal. Bus. & Professions Code Sections 17200, et seq.*

61. Defendants aforementioned actions, as described previously, were unlawful, unfair and entitle Plaintiff to relief in the restoration of any monies and property that Defendants acquire through the unfair competition pursuant to *Cal. Bus. & Professions Code Sections 17203*, disgorgement of profits, and injunctive relief.

SEVENTH CAUSE OF ACTION
(VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT; AGAINST ALL DEFENDANTS)

62. Plaintiff realleges and incorporates by reference the prior and subsequent

1 paragraphs of this Complaint.

2 63. Defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18
3 United States Code § 1961, et seq.

4 64. Defendants engaged in a civil conspiracy, the purpose of which was to use stolen
5 Confidential Information, work product, and trade secrets obtained through breaches of contact
6 and breaches of fiduciary duty as part of a larger overall conspiracy to engage in a business which
7 followed the goals, plans, and methods of the Actual Movie Exchange (the “Conspiracy”).

8 65. Defendants formed an association in fact to conduct an enterprise (the “RICO
9 Enterprise”) for the purpose of engaging in the Conspiracy.

10 66. In furtherance of the Conspiracy of the RICO Enterprise, the Defendants
11 perpetrated tortious conduct as alleged herein and in tortious conduct communicated between
12 themselves and with third persons via email and through interstate travel.

13 67. The Conspiracy and the RICO Enterprise affected interstate commerce, and was
14 effectuated through a pattern of racketeering consisting of numerous violations of 18 United States
15 Code Section 1341 (Frauds and swindles).

16 68. The illegal acts of Defendants and the acts of Defendants that were indictable under
17 18 U.S.C. Sections 1341 constituted a pattern of racketeering activity because all of the acts
18 occurred after the effective date of Chapter 96 of Part I of Title 18 of the United States Code and a
19 second act or threat occurred within ten years of the first act.

20 69. The Conspiracy and the RICO Enterprise damaged Plaintiffs.

21 70. The actions of the Defendants have damaged ESX in the amount of \$25 Million, or
22 such other amount as may be proven at trial.

23 71. Plaintiffs are entitled, jointly and severally as to all Defendants, trebling of the
24 damages, and recovery of attorney’s fee.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for relief and judgment against all Defendants, as follows:

27
28 1. For compensatory damages in an amount in excess of \$25 Million, or such other

amount as may be determined to be appropriate by the Court.

2. For punitive damages in an amount to be proven at trial.

3. For disgorgement of profits.

4. For injunctive relief.

4. For interest, late charges, costs of suit, attorney's fees, and such other relief as the Court may deem just and appropriate.

Dated: May 22, 2019

LAW OFFICES OF MARK C. FIELDS, APC

By /s/ Mark C. Fields
Mark C. Fields
Attorneys for Plaintiff.